SBCivil Writ Petition No.762/2006
Narpat Singh Singhvi
vs.
Education Committee & Ors.

Date of Order :: 12th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. I.R.Choudhary]
Mr. R.K.Soni ] for the petitioner.
Mr. M.R.Singhvi ]
Mr. Manoj Bhandari] for the respondents.

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The petitioner, Officiating Principal of an Aided Educational Institution, preferred this petition for writ giving challenge to the order dated 3.10.1005 passed by the Honorary Secretary of the aided institution placing him under suspension and the charge sheet dated 26.9.2005 initiating disciplinary proceedings against him. The challenge, as above, is given on two counts, those are; (1)the Honorary Secretary of the Managing Committee is not empowered under the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter referred to as “the Act of 1989”) and the Rules framed thereunder to place the petitioner under suspension, as such the order of suspension is without jurisdiction; and (2) the order placing the petitioner under suspension and initiation of disciplinary proceedings are out come of malafides, therefore, the orders impugned deserve to be quashed.

While challenging the order of suspension it is contended by counsel for the petitioner that under

Rule 38 of the Rajasthan Non-Government Educational Institutions (Recognition, Grand-in-aid and Service Conditions etc.) Rules, 1993 (hereinafter referred to as "the Rules of 1993") the power to place an employee under suspension vests with the Managing Committee and the Honorary Secretary of the respondent institution by force of Rule 25 of the Rules of 1993 could have issued an order of suspension only with prior approval of the Managing Committee, no such prior approval was taken, therefore, the order of suspension is non-est in eye of law being without jurisdiction.

To substantiate the contention that disciplinary proceeding was ordered to be initiated malafidely, the petitioner has contended as under:-

> "That the respondent No.3, Shri Pradeep Gang wanted the petitioner to act in accordance with his will and desire even contrary to the law which the petitioner could not do as the petitioner has always been working honestly and in accordance with the law. Since, the respondent No.3 wanted the petitioner to do certain jobs contrary to the law and procedure, in asmuch as the petitioner was asked by the respondent No.3 Shri Pradeep Gang to grant admission to the children not in accordance with the merit but in accordance with the will and desire of the respondent No.3 as is clear from a slip dated 6.7.2004, a copy whereof is submitted herewith and marked as Annexure-3. It may be mentioned here that by chance the slip, Annex.3 was written by the respondent No.3,

however, prior to the slip, Annex.3 also the respondent No.3 has been pressurising the petitioner to do illegal work including admitting the students at the desire of respondent No.3, Shri Pradeep Gang and to attest the copies of documents even in absence of their originals, besides many other illegal and irregular jobs which the petitioner was not in position to perform. This led the annoyance of respondent No.3 with the petitioner and he threatened the petitioner of dire consequences to remove him from the service. Thus, the petitioner requested the authorities of respondents to relive him from the post of Officiating Principal and put him back on his substantive post of Lecturer as is clear by his repeated representations dated 27.7.2004 and 9.2.2005, the copies whereof are jointly produced herewith and marked as Annexure-4. It may be mentioned here that the respondent No.3 had written several letters/note-sheets addressed to the petitioner with oblique motive and for harassing him and troubling him and in order to fish out and make out some fault with the petitioner so as to trouble and harass him. However, the petitioner without giving any such chance, had been generally submitting his reply to the letters addressed to him. It may also be mentioned here that despite petitioner's written request to post him on his original and substantive post of Lecturer by relieving him from the post of Officiating Principal, the petitioner has not been posted on the post of Lecturer. On the contrary, he has been deliberately and malafidely kept continued on the Officiating post of Lecturer without allowing him to discharge his duties

as even Officiating Lecturer without any unlawful interference by the respondent No.3."

A reply to the writ petition has been filed on behalf of the respondent institution denying the allegations of malafides and also denying that the order of suspension lacks competence. It is averred that the Managing Committee as defined under Section 2 (o) of the Act of 1989 includes Secretary, therefore, the order passed by the Secretary is deemed to be passed by the Managing Committee. It is also averred that the Managing Committee empowered the Honorary Secretary to take appropriate action against the petitioner by a resolution dated 27.6.2005 and the petitioner was placed under suspension in pursuant thereto, therefore, the officiating Secretary was having authority to exercise the powers under Rule 38 of the Rules of 1993. An affidavit is also submitted by the respondent No.3 (Officiating Secretary of the Institution) denying the allegations of malafides.

It is also strenuously urged by the counsel for the respondents that this Court should not exercise its extra ordinary powers in the instant matter as the petitioner is having an efficacious alternative remedy for redressal of his grievance by way of filing an application under Section 21 of the Act of 1989 before the Rajasthan Non-Government Educational Institutions Tribunal. To meet with the

objection above, it is contended by the counsel for the petitioner that the availability of an alternative remedy does not bar for invoking extra ordinary jurisdiction of the Court, specially in a case where allegation in that the order under challenge is without jurisdiction.

The Rajasthan State Legislature enacted the Rajasthan Non-Government Educational Institutions Act, 1989 to provide for better organisation and development of education in the non-government educational institutions in the State of Rajasthan. The recognised educational institutions managed by the private managements are within the effective control of the State Government and a mechanism is provided under the Act of 1989 for redressal of the grievances of the management as well as of the employees employed with the recognised non-government educational institutions. Chapter VIth of the Act of 1989 pertains to conditions of service of employees of recognised institutions and also prescribes remedy for redressal of grievances of the employees. Section 21 of the Act of 1989 empowers Rajasthan Non-Government Educational Institutions Tribunal to adjudicate and decide grievances of the employees as well as of the management in respect to conditions of service. The Tribunal constituted under the Act of 1989 is required to be headed by a judicial officer of the rank of District Judge. The Tribunal is having the same powers

as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a civil suit with respect of enforcing the attendance of any person and examining him on oath, compelling the production of documents and material objects and issuing commission for examination of witnesses. The proceedings before the tribunal are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of Indian Penal Code, 1860. The Tribunal is also having power to initiate contempt proceedings for violation of its orders and directions. Accordingly the remedy provided under Section 21 of the Act of 1989 is an efficacious alternative remedy available to the petitioner.

I am having no doubt that in an appropriate case irrespective of availability of alternative remedy the High Court may exercise its powers under Article 226 of the Constitution of India but in normal course such power to entertain writ petitions is not required to be exercised unless it is shown that there is something more in the matter, something going to the root of jurisdiction, something which would show that it would be a case of pulpable injustice to force a party to avail the remedies provided under the statute. Wherever the High Court finds that the factual disputes are involved then the appropriate course is to relegate the party concerned to avail the remedy provided under the statute.

In the instant matter it is true that the allegation of the petitioner is that the order of suspension passed by the Honorary Secretary is without jurisdiction but at the same time the petitioner has also given challenge to the order impugned and also to initiation of disciplinary proceedings on the ground of malafides. The allegations of malafides are based on facts which are highly disputed. This Court is not equipped sufficiently to adjudicate the allegations of malafides in present set of disputed facts. The grievance of the petitioner can be more effectively and efficaciously be adjudicated by the Tribunal that is having power to examine witnesses on oath as prescribed under Section 25 of the Act of 1989.

In totality of facts and circumstances of the instant matter I am is of the considered opinion that the petitioner should have availed the remedy provided under Section 21 of the Act of 1989 for redressal of his grievances before approaching this Court.

Accordingly, this petition for writ is dismissed. However, it is open for the petitioner to claim the relief as prayed in this writ petition by way of filing an application under Section 21 of the Act of 1989.

No order as to costs.

( GOVIND MATHUR ),J.

kkm/ps.